

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING MENTAL HEALTH SERVICES LAWS
5 FOR WOMEN RELINQUISHING A CHILD FOR ADOPTION; ESTABLISHING REQUIREMENTS RELATED TO
6 MENTAL HEALTH SERVICES FOR WOMEN PLANNING TO RELINQUISH A CHILD FOR ADOPTION;
7 REQUIRING WOMEN TO BE NOTIFIED OF THE AVAILABILITY OF OUTPATIENT MENTAL HEALTH
8 SERVICES; ALLOWING ADOPTIVE PARENTS TO PAY COSTS RELATED TO OUTPATIENT MENTAL
9 HEALTH SERVICES; AND AMENDING SECTIONS 42-2-408, 42-2-409, 42-2-412, 42-2-604, 42-4-102, 42-4-
10 103, 42-4-405, 42-7-101, 42-7-102, AND 52-8-104, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 42-2-408, MCA, is amended to read:

15 **"42-2-408. Time and prerequisites for execution of relinquishment and consent to adoption --**
16 **copy of preplacement evaluation -- notarization.** (1) A parent whose consent to the adoption of a child is
17 required may execute a relinquishment and consent to adoption only after the following criteria have been met:

- 18 (a) the child has been born;
- 19 (b) not less than 72 hours have elapsed since the birth of the child;
- 20 (c) the parent has received informed consent counseling in accordance with 42-2-409; and
- 21 (d) in a direct parental placement adoption:
 - 22 (i) the parent has been informed that fees for any required counseling and legal fees are allowable
 - 23 expenses that may be paid by a prospective adoptive parent under 42-7-101, subject to the limitations set in
 - 24 42-7-102;
 - 25 (ii) if the parent is a minor, the parent has been represented by separate legal counsel; and
 - 26 (iii) prior to the execution of the relinquishment, the parent has been provided a copy of the
 - 27 preplacement evaluation prepared pursuant to 42-3-204 pertaining to the prospective adoptive parent.

28 (2) A guardian may execute a relinquishment and consent to adopt at any time after being authorized

1 by a court.

2 (3) The department or a licensed child-placing agency may execute a consent for the adoption at any
3 time before or during the hearing on the petition for adoption.

4 (4) A child whose consent is required may execute a consent at any time before or during the hearing
5 on the petition to adopt.

6 (5) Except as provided in this section, a relinquishment and consent to adopt must be a separate
7 instrument executed before a notary public.

8 (6) If the person from whom a relinquishment and consent to adopt is required is a member of the
9 armed services or is in prison, the relinquishment may be executed and acknowledged before any person
10 authorized by law to administer oaths."
11

12 **Section 2.** Section 42-2-409, MCA, is amended to read:

13 **"42-2-409. Counseling Informed consent counseling requirements.** (1) ~~Counseling of the birth~~
14 ~~mother is required in~~ department, agency, and direct parental placement adoptions, the birth mother must
15 receive the informed consent counseling required under this section. If any other parent is involved in an
16 adoptive placement, informed consent counseling of that parent is encouraged.

17 (2) ~~Counseling~~ Informed consent counseling must be performed by a person employed by the
18 department or by a staff person of a licensed child-placing agency designated to provide ~~this type of the~~
19 counseling. Unless the counseling requirement is waived for good cause by a court, a minimum of 3 hours of
20 informed consent counseling must be completed prior to execution of a relinquishment of parental rights and
21 consent to adopt. A relinquishment and consent to adopt executed prior to completion of required counseling is
22 void.

23 (3) ~~During counseling, the counselor~~ The person providing informed consent counseling shall offer an
24 explanation of:

25 (a) adoption procedures and options that are available to a parent through the department or licensed
26 child-placing agencies;

27 (b) adoption procedures and options that are available to a parent through direct parental placement
28 adoptions, including the right to an attorney and that legal expenses are an allowable expense that may be paid

1 by a prospective adoptive parent as provided in 42-7-101 and 42-7-102;

2 (c) the alternative of parenting rather than relinquishing the child for adoption;

3 (d) the resources that are available to provide assistance or support for the parent and the child if the
4 parent chooses not to relinquish the child;

5 (e) the legal and personal effect and impact of terminating parental rights and of adoption;

6 (f) the options for contact and communication between the birth family and the adoptive family;

7 (g) postadoptive issues, including grief and loss, and the existence of ~~a~~any postadoptive counseling
8 and support program offered pursuant to 42-4-211;

9 (h) the option for obtaining medically necessary prenatal and postnatal outpatient mental health
10 services. The person shall provide a list of state mental health resources.

11 ~~(h)(i)~~ the reasons for and importance of providing accurate medical and social history information
12 under 42-3-101;

13 ~~(i)(j)~~ the operation of the confidential intermediary program; and

14 ~~(i)(k)~~ the fact that the adoptee may be provided with a copy of the original birth certificate upon
15 request after reaching 18 years of age unless the birth parent has specifically requested in writing that the vital
16 statistics bureau withhold release of the original birth certificate. The birth parent may change the request at
17 any time by notifying the vital statistics bureau in writing of the change.

18 (4) ~~The counselor-person providing informed consent counseling~~ shall prepare a written report
19 containing a description of the topics covered and the number of hours of counseling. The report must
20 specifically include the ~~counselor's~~person's opinion of whether or not the parent understood all of the issues
21 and was capable of informed consent. The report must, on request, be released to the person counseled, to the
22 department, to an agency, or with the consent of the person counseled, to an attorney for the prospective
23 adoptive parents."
24

25 **Section 3.** Section 42-2-412, MCA, is amended to read:

26 **"42-2-412. Content of relinquishment and consent to adopt.** (1) A relinquishment and consent to
27 adopt must be in writing and must contain:

28 (a) the date, place, and time of the execution of relinquishment and consent to adopt;

1 (b) the name, date of birth, and current mailing address of the individual executing the relinquishment
2 and consent to adopt;

3 (c) the date of birth and the name of the child to be adopted; and

4 (d) the name, address, and telephone numbers of the department or agency to which the child is
5 being relinquished or the name, address, and telephone numbers of the prospective adoptive parent with whom
6 the individual executing the relinquishment and consent has placed or intends to place the child for adoption.

7 (2) A relinquishment and consent to adopt executed by a parent or guardian must state that the
8 parent or guardian executing the document is voluntarily and unequivocally consenting to the:

9 (a) permanent transfer of legal and physical custody of the child to the department or agency for the
10 purposes of adoption; or

11 (b) transfer of permanent legal and physical custody to, and the adoption of the child by, a specific
12 identified adoptive parent whom the parent or guardian has selected.

13 (3) A relinquishment and consent to adopt must state:

14 (a) that after the document is signed or confirmed in substantial compliance with this section, it is final
15 and, except under a circumstance stated in 42-2-411, may not be revoked or set aside for any reason, including
16 the failure of an adoptive parent to permit the individual executing the relinquishment and consent to adopt to
17 visit or communicate with the child;

18 (b) that the relinquishment will result in the extinguishment of all parental rights and obligations that
19 the individual executing the relinquishment and consent to adopt has with respect to the child, except for
20 arrearages of child support unless the arrearages are waived by the person to whom they are owed, and that
21 the relinquishment will remain valid whether or not any agreement for visitation or communication with the child
22 is later performed;

23 (c) that the individual executing the relinquishment and consent to adopt has:

24 (i) received a copy of the relinquishment and consent to adopt;

25 (ii) received a copy of a written agreement by the department, agency, or prospective adoptive parent
26 to accept temporary custody and to provide support and care to the child until an adoption petition is granted or
27 denied;

28 (iii) if required, received informed consent counseling services pursuant to 42-2-409 explaining the

1 meaning and consequences of an adoption and informing the individual of the option for obtaining medically
2 necessary prenatal and postnatal outpatient services;

3 (d) in direct parental placement adoptions, that the individual has:

4 (i) if a minor parent, been advised by a lawyer who is not representing the adoptive parent;

5 (ii) if an adult, been advised of the right to have a lawyer who is not representing the adoptive parent;

6 (iii) been advised that the attorney fees are allowable expenses that can be paid by the prospective
7 adoptive parents; and

8 (iv) been provided with a copy of the prospective adoptive parent's preplacement evaluation;

9 (e) in agency and direct parental placement adoptions, that the individual has:

10 (i) been advised of the obligation to provide the medical and social history information required under
11 42-3-101 pertaining to disclosures; and

12 (ii) not received or been promised any money or anything of value for execution of the relinquishment
13 and consent to adopt, except for payments authorized by 42-7-101 and 42-7-102.

14 (4) A relinquishment and consent to adopt may provide that the individual who is relinquishing waives
15 notice of any proceeding for adoption."
16

17 NEW SECTION. Section 4. Notification of availability of mental health services. A health care
18 provider providing primary or prenatal care to a birth mother shall inform the birth mother of the availability of
19 medically necessary outpatient mental health services.
20

21 **Section 5.** Section 42-2-604, MCA, is amended to read:

22 **"42-2-604. Contents of petition for termination of parental rights.** (1) The petition for termination
23 of parental rights must state:

24 (a) the identity of the petitioner;

25 (b) the date and location of the birth of the child;

26 (c) the date of the relinquishment by the birth mother or relinquishing parent;

27 (d) the current location of the child;

28 (e) the names and locations, if known, of any putative or presumed father of the child;

- 1 (f) whether a parent is one from whom consent is not required;
- 2 (g) whether court orders from any other proceeding have been issued terminating parental rights to
- 3 the child that is the subject of the petition;
- 4 (h) any other evidence supporting termination of the legal rights that a person has with regard to the
- 5 child; and
- 6 (i) a request for temporary custody of the child prior to the adoption.
- 7 (2) The petitioner shall file with the petition for termination of parental rights the following documents
- 8 received in support of the petition:
- 9 (a) any relinquishments and consents to adoption;
- 10 (b) any denials of paternity;
- 11 (c) any acknowledgments of paternity and denial of parental rights;
- 12 (d) any affidavits from the putative father registry that have been executed by the department;
- 13 (e) a the informed consent counseling report required under 42-2-409;
- 14 (f) proof of prior service of any notice or acknowledgment of service or waiver of service received; and
- 15 (g) proof of compliance with the Indian Child Welfare Act of 1978 and Interstate Compact on the
- 16 Placement of Children, if applicable."

17
18 **Section 6.** Section 42-4-102, MCA, is amended to read:

19 **"42-4-102. Duties of placing parent.** (1) A parent who is directly placing a child for adoption shall

20 execute a voluntary relinquishment and consent to adopt, including:

- 21 (a) receiving the informed consent counseling required by 42-2-409; and
- 22 (b) if the parent is a minor, being advised by legal counsel other than the attorney representing the
- 23 prospective adoptive parent.

24 (2) A placing parent shall identify and provide information on the location of any other legal parent or

25 guardian of the child and any other person required to receive notice under 42-2-605, including:

- 26 (a) any current spouse;
- 27 (b) any spouse who is the other birth parent and to whom the parent was married at the probable time
- 28 of conception or birth of the child; and

- 1 (c) any adoptive parent.
- 2 (3) A placing parent shall identify and provide information pertaining to any Indian heritage of the child
- 3 that would bring the child within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.
- 4 (4) A parent placing a child for adoption in a direct parental placement adoption shall provide:
- 5 (a) the disclosures of medical and social history required pursuant to 42-3-101;
- 6 (b) a certified copy of the child's birth certificate or other document certifying the place and date of the
- 7 child's birth; and
- 8 (c) a certified copy of any existing court orders pertaining to custody or visitation of the child.
- 9 (5) A parent placing a child for adoption in a direct parental placement adoption shall file a notice of
- 10 parental placement.
- 11 (6) A parent placing a child for adoption in a direct parental placement adoption shall file a disclosure
- 12 of all disbursements made to or for the benefit of the parent by the prospective adoptive parent or any person
- 13 acting on behalf of the prospective adoptive parent.
- 14 (7) Subject to the limitations set in 42-7-102, ~~counseling expenses for informed consent and~~
- 15 postadoptive counseling and for outpatient mental health services, legal fees, and the reasonable costs of
- 16 preparing reports documenting the required disclosures of medical and social history and the disclosures
- 17 documenting disbursements are allowable expenses that can be paid for by the prospective adoptive parent."

18
19 **Section 7.** Section 42-4-103, MCA, is amended to read:

20 **"42-4-103. Direct parental placement -- information to be filed.** (1) A parent who proposes to place

21 a child for adoption with a prospective adoptive parent who resides in Montana and who is not the child's

22 stepparent or an extended family member shall file with the court of the county in which the prospective

23 adoptive parent or the parent making the placement resides the following:

- 24 (a) a notice of parental placement containing the following information:
- 25 (i) the name and address of the placing parent;
- 26 (ii) the name and address of each prospective adoptive parent;
- 27 (iii) the name and address or expected date and place of birth of the child;
- 28 (iv) the identity and information on the location of any other legal parent or guardian of the child and

1 any other person required to receive notice under 42-2-605, including any current spouse, any spouse who is
2 the other birth parent and to whom the parent was married at the probable time of conception or birth of the
3 child, and any adoptive parent;

4 (v) all relevant information pertaining to any Indian heritage of the child that would bring the child
5 within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.; and

6 (vi) the name and address of counsel, a guardian ad litem, or other representative, if any, of each of
7 the parties mentioned in subsections (1)(a)(i) through (1)(a)(iii);

8 (b) a relinquishment and consent to adoption of the child by the adoptive parent;

9 (c) the informed consent counseling report required by 42-2-409;

10 (d) the medical and social history disclosures required by 42-3-101;

11 (e) a report of disbursements identifying all payments made to or to the benefit of the placing parent
12 by the prospective adoptive parent or anyone acting on the parent's behalf that contains a statement by each
13 person furnishing information in the report attesting to the truthfulness of the information furnished by that
14 person;

15 (f) a certified copy of the child's birth certificate or other document certifying the place and date of the
16 child's birth;

17 (g) a certified copy of any existing court orders pertaining to custody or visitation of the child; and

18 (h) the preplacement evaluation.

19 (2) The notice of parental placement must be signed by the parent making the placement."
20

21 **Section 8.** Section 42-4-405, MCA, is amended to read:

22 **"42-4-405. Procedure.** Except as otherwise provided in this part, the procedure and law for adoption
23 of a child set forth in this title is applicable in proceedings for the adoption of an adult. The provisions
24 concerning the informed consent counseling requirement, preplacement evaluation, postplacement supervision
25 period, and postplacement evaluation are not applicable to the adoption of an adult."
26

27 **Section 9.** Section 42-7-101, MCA, is amended to read:

28 **"42-7-101. Fees related to placement for adoption by parent.** (1) Reasonable adoption fees may

- 1 be paid by the adoptive parent for the actual cost of services. The cost of services must relate to:
- 2 (a) a petition for adoption;
- 3 (b) placement of a child;
- 4 (c) medical care or services, including cost-sharing amounts for any medically necessary prenatal and
- 5 postnatal outpatient mental health services;
- 6 (d) prenatal care;
- 7 (e) foster care;
- 8 (f) a preplacement evaluation;
- 9 (g) counseling related to providing information necessary to make an informed decision to voluntarily
- 10 relinquish a child;
- 11 (h) travel or temporary living costs for the birth mother;
- 12 (i) legal fees incurred for services on behalf of the placing parent;
- 13 (j) the reasonable costs incurred by a placing parent in a direct parental placement adoption to
- 14 document the disclosures of medical and social history required by 42-3-101; and
- 15 (k) other reasonable costs related to adoption that do not include education, vehicles, salary or
- 16 wages, vacations, or permanent housing for the birth parent.

17 (2) A birth parent or a provider of a service listed in subsection (1) may receive or accept a payment

18 authorized by subsection (1). The payment may not be made contingent on the placement of a child for

19 adoption or upon relinquishment of and consent to adoption of the child. If the adoption is not completed, a

20 person who is authorized by subsection (1) to make a specific payment is not liable for that payment unless the

21 person has agreed in a signed writing with a birth parent or a provider of a service to make the payment

22 regardless of the outcome of the proceeding for adoption."

23

24 **Section 10.** Section 42-7-102, MCA, is amended to read:

25 **"42-7-102. Limitations on payment of counseling and legal fees.** (1) A prospective adoptive

26 parent may pay counseling expenses for a combined maximum of 10 hours of informed consent counseling

27 provided pursuant to 42-2-409 and postadoptive counseling provided pursuant to 42-4-211.

28 (2) A prospective adoptive parent may pay cost-sharing expenses for prenatal or postnatal outpatient

1 mental health services provided to the birth mother. Expenses under this subsection are limited to the amount,
2 duration, and type of outpatient mental health services covered by the medical assistance program provided for
3 in Title 53, chapter 6, part 1.

4 ~~(2)~~(3) A prospective adoptive parent may pay for legal costs entailed for providing legal counsel for
5 one birth parent unless the birth parents elect joint representation. The right of a relinquishing parent to legal
6 counsel paid by the prospective adoptive parent continues only until the relinquishment becomes irrevocable.
7 An attorney may not represent both a birth parent and a prospective adoptive parent."

8

9 **Section 11.** Section 52-8-104, MCA, is amended to read:

10 **"52-8-104. Requirements for licensure.** The department may issue licenses to agencies meeting the
11 following minimum requirements:

12 (1) The chief function of the agency or a specific program within the agency must be the care and
13 placement of children.

14 (2) The agency operates on a nonprofit basis and is financially responsible in and for its operation.

15 (3) The agency meets the requirements as designated by the department by rule.

16 (4) The directing or managing personnel of the agency must be qualified both on the basis of
17 professional educational experience and character.

18 (5) The agency shall maintain complete records of the children and adoptive or foster parents with
19 which the agency deals. Adoption records must be maintained in accordance with 42-6-101.

20 (6) The agency shall maintain and use an in-state office for making a social study of the child,
21 particularly with regard to the physical and mental condition of the child and the child's family background.

22 (7) The agency shall maintain and use an in-state office for conducting a preplacement evaluation for
23 adoptive parents or a home study for foster parents, particularly with regard to the physical and mental health,
24 emotional stability, and personal integrity of the adoptive or foster parents and their ability to promote the child's
25 welfare.

26 (8) The agency must have the ability to provide education for adoptive or foster parents and informed
27 consent counseling for placing parents as required in 42-2-409 and department rules.

28 (9) The agency shall agree to cooperate with courts having jurisdiction in adoptive or foster care

1 matters and with other public agencies having to deal with the welfare of children.

2 (10) The agency shall, annually, submit a full, complete, and true financial statement to the
3 department, and the statement must contain a full accounting of the operations of the agency during the
4 preceding year."

5
6 NEW SECTION. **Section 12. Codification instruction.** [Section 4] is intended to be codified as an
7 integral part of Title 42, chapter 2, part 4, and the provisions of Title 42, chapter 2, part 4, apply to [section 4].

8 - END -